



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0479; FRL-10665-02-R3]

Air Plan Approval; Pennsylvania; Infrastructure State Implementation Plan Revision Clean Air Act Section 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. Whenever EPA promulgates a new or revised national ambient air quality standard (NAAQS or standard), the Clean Air Act (CAA) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Pennsylvania has formally submitted a SIP revision addressing certain infrastructure elements for certain sections of the CAA for the 2015 8-hour ozone NAAQS. EPA is approving Pennsylvania's submittal addressing these infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of the CAA.

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0479. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Dr. Michael O'Shea, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2064. Dr. O'Shea can also be reached via electronic mail at OShea.Michael@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On February 27, 2023 (88 FR 12301), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of the infrastructure requirements submitted by Pennsylvania for section 110(a) of the CAA for the 2015 ozone NAAQS, aside from visibility protection. The formal SIP revision was submitted by Pennsylvania on April 20, 2021.

On October 26, 2015, EPA issued a final rule revising both the primary and secondary ozone NAAQS for ground-level ozone to 0.070 parts per million (ppm), based on the fourth-highest maximum daily 8-hour ozone concentration per year, averaged over three years. 80 FR 65292.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an "infrastructure SIP." These submissions must meet the various requirements of CAA section 110(a)(2), as applicable, within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) of the CAA provides the procedural and timing

requirements for SIPs, while section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program framework and adequate legal authority that are designed to assure attainment and maintenance of the NAAQS.

II. Summary of SIP Revision and EPA Analysis

On April 20, 2021, the Commonwealth of Pennsylvania formally submitted a SIP revision to satisfy the infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS (referred to as “Pennsylvania’s submittal”). Pennsylvania’s submittal addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration (PSD)), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Pennsylvania’s submittal does not address the following elements of CAA section 110(a)(2): sub-element (D)(i)(I) related to interstate transport; and element (I), which pertains to the nonattainment requirements of part D, title I of the CAA. Also, the Pennsylvania infrastructure SIP submittal addressed the PSD portion of section 110(a)(2)(D)(i)(II) but provided only narrative context regarding the history of the visibility protection portion of section 110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on the visibility protection element of 110(a)(2)(D)(i)(II) at this time.

With respect to element (I), according to EPA’s 2013 Infrastructure Guidance, element (I) pertains to part D of title I of the CAA, which addresses SIP requirements and submission deadlines for areas designated nonattainment for a NAAQS. This element pertains to SIP revisions that are collectively referred to as nonattainment SIPs or attainment plans. Such SIP revisions are required if an area is designated nonattainment and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subparts 2 through 5. Because the CAA directs states to submit these plan elements on a separate schedule, EPA does not believe it is

necessary for states to include these elements in the infrastructure SIP submission due three years after adoption or revision of a NAAQS.¹ Pennsylvania's submittal also did not address the portion of CAA section 110(a)(2)(D)(i)(I) related to interstate transport for the 2015 ozone NAAQS. Therefore, EPA is not taking any action related to Pennsylvania's obligations under section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Based upon EPA's review of Pennsylvania's submittal, EPA proposed to determine that Pennsylvania's submittal satisfies the infrastructure elements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS on February 27, 2023, via an NPRM.

Other specific requirements of the infrastructure SIP and the rationale for EPA's proposed action are explained in the NPRM, and its associated technical support document (TSD), and will not be restated here. The NPRM and TSD are available in the docket for this rulemaking at www.regulations.gov, Docket ID Number EPA-R03-OAR-2021-0479.

III. EPA's Response to Comments Received

EPA received one comment which can be found in the docket. The commenter expressed support for this action.

IV. Final Action

EPA is approving Pennsylvania's April 20th, 2021 infrastructure submission which satisfies the following requirements of CAA section 110(a) for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). Pennsylvania's submittal did not address the following infrastructure elements: CAA section 110(a)(2)(D)(i)(I) related to interstate transport; and CAA section 110(a)(2)(I) pertaining to the nonattainment requirements of part D, title I of the CAA. Therefore, EPA is not taking action on these elements. Furthermore, Pennsylvania's submittal included only narrative historical

¹ See the "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013, for reference, included in the docket for this rulemaking action available at www.regulations.gov, Docket ID Number EPA-R03-OAR-2021-0479.

information pertaining to the visibility protection element of 110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on that element at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The Pennsylvania Department of Environmental Protection (PADEP) did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to Pennsylvania’s section 110(a)(2) infrastructure elements for the 2015 ozone NAAQS may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. In § 52.2020, the table in paragraph (e)(1) is amended by adding the entry “Infrastructure State Implementation Plan Revision Clean Air Act Sections 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)” at the end of the table to read as follows:

§ 52.2020 Identification of plan.

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(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
Infrastructure State Implementation Plan Revision Clean Air Act Sections 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)	Statewide	4/20/2021	[insert date of publication in the Federal Register], [insert Federal Register citation]	This section is amended. This action addresses the following, or portions thereof, CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II)(Prevention of Significant Deterioration), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

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